

TH Reg. # 3,625,669

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Revel Match, LLC d/b/a Rave Sports,	)	Civil Action No. _____
	)	
Plaintiff,	)	
	)	<b>COMPLAINT FOR TRADEMARK</b>
v.	)	<b>INFRINGEMENT AND UNFAIR</b>
	)	<b>COMPETITION</b>
Aquawood, LLC,	)	
	)	<b>DEMAND FOR JURY TRIAL</b>
Defendant.	)	
	)	
	)	

For its Complaint against Defendant Aquawood, LLC ("Aquawood"), Plaintiff Revel Match, LLC d/b/a Rave Sports ("RAVE") states and alleges as follows:

**THE PARTIES**

1. Plaintiff is a Minnesota limited liability company with its principal place of business located in St. Paul, Minnesota. Without limitation, Plaintiff is engaged in the business of marketing, promoting, and selling water recreation products.

2. On information and belief, Defendant is a California limited liability company with its principal place of business in Los Angeles, California. Defendant is engaged in the business of marketing, promoting, and selling water recreation products.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1338(a) in that this case arises under the Trademark Laws of the United States, 15 U.S.C. §§ 1051, *et seq.*, and 28 U.S.C. § 1331 (federal question). This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because the parties have complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. This Court has subject matter of all claims herein arising under state law pursuant to 28 U.S.C. § 1367 in that said claims are so related to the claim under the Trademark Laws of the United States, 15 U.S.C. §§ 1051, *et seq.*, that they form part of the same case or controversy.

5. Venue in this District is proper under 28 U.S.C. §§1391(b) and (c).

### **FACTS**

6. Plaintiff is the owner of U.S. Trademark Registration No. 3,625,669 for the standard character mark "AQUA JUMP" covering, without limitation, "water recreation products, namely, floating trampolines."

7. Plaintiff also has common law rights in the use of AQUA JUMP beginning with use of the mark in commerce at least as early as 1995. Plaintiff and/or its predecessor in interest has used the AQUA JUMP Mark continuously since at least as early as 1995 throughout the United States and has expended substantial resources in the promotion of the AQUA JUMP Mark and to establish goodwill therein. As a result, the AQUA JUMP Mark has become, through widespread and favorable acceptance and recognition, an asset of substantial value to the company.

8. Plaintiff has expended considerable time, resources and effort in promoting the AQUA JUMP Mark and developing substantial goodwill associated therewith.

9. Due to the continual use of the AQUA JUMP Mark by Plaintiff and/or its predecessor in interest, the Mark became famous and acquired secondary meaning years ago. The Mark has come to indicate Plaintiff as the single source of the quality goods and services associated with the Mark.

10. Without the knowledge or consent of Plaintiff, and beginning after Plaintiff had established extensive and valuable goodwill in connection with its goods and services identified by the subject AQUA JUMP Mark, Defendant commenced to use in interstate commerce and

commerce affecting interstate commerce, the AQUA JUMP mark to promote goods covered by Plaintiff's trademark rights, including, without limitation, a water recreation product called the "AQUA JUMP SLIDE."

11. Such use of the AQUA JUMP Mark and name by Defendant is without permission or authority of Plaintiff and is likely to cause or has caused confusion, mistake and deception among consumers and customers as to the source, nature and quality of the goods and services offered by Defendant.

12. Plaintiff has protested Defendant's activities and demanded that Defendant cease all use of the AQUA JUMP Mark. Specifically, on or about May 10, 2012, Plaintiff sent a letter to Defendant affirming Plaintiff's rights, demanding that Defendant cease all use of the AQUA JUMP Mark, and demanding that Defendant contact Plaintiff within seven (7) days to both (i) confirm it will honor Plaintiff's trademark rights and (ii) discuss an acceptable transition to a non-infringing product name and mark. The cease and desist directive clarified that Plaintiff's "preference [was] an amicable resolution" but that "if [Defendant] fail[ed] to honor our trademark rights we will be forced to consider all available legal options."

13. Defendant failed to communicate with Plaintiff in any fashion. Rather, six (6) days later, on May 16, 2012, Defendant anticipatorily filed a Declaratory Judgment Complaint in United States District Court for the Central District of California. Without limitation, the intent and effect of such action was to improperly strip Plaintiff of its forum of choice and frustrate good faith settlement discussions. Without limitation, Defendant's Complaint seeks declaratory relief of trademark non-infringement and cancellation of Plaintiff's federal trademark registration for the AQUA JUMP Mark.

14. In its initial Complaint, Defendant represented it had not “promoted, marketed, offered for sale, sold, distributed, used the Aqua Jump name or otherwise placed the Bonzai Aqua Jump Slide in the stream of commerce, nor caused others to do so, since 1999.”

15. In light of Defendant’s representation that it had not used the mark in commerce for approximately thirteen (13) years, Plaintiff worked in good faith to negotiate an amicable resolution. Without limitation, Plaintiff advised Defendant that based on the allegations of the Complaint indicating no use in commerce of the infringing mark by Defendant for approximately thirteen (13) years, there appeared to be no case or controversy and the requisite standing was missing.

16. Despite Plaintiff’s expressed concerns regarding standing, at no point during the parties’ communications or negotiations did Defendant advise Plaintiff that its initial claimed date of last use (1999) was incorrect. Rather, Defendant filed an Amended Complaint on June 19, 2012 wherein it changed the alleged date it stopped using the infringing AQUA JUMP Mark. Specifically, Defendant now represents that it has not “promoted, marketed, offered for sale, sold, distributed, used the Aqua Jump name or otherwise placed the Bonzai Aqua Jump Slide in the stream of commerce, nor caused others to do so, since 2009.”

17. Plaintiff continued to attempt to reach an amicable resolution in light of Defendant’s continued representation that it does not currently use the infringing AQUA JUMP Mark and has allegedly not used the mark in commerce for approximately three (3) years.

18. Despite Plaintiff’s efforts to reach an amicable resolution, Defendant formally served Plaintiff with its Amended Complaint on September 10, 2012.

**COUNT I**

**TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT,  
15 U.S.C. §§ 1051, ET SEQ.**

16. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

17. Defendant's acts constitute trademark infringement in violation of the Federal Trademark Act of 1946, specifically 15 U.S.C. § 1114(1), and of Plaintiffs' trademark rights at common law.

18. Defendant's acts of infringement have caused Plaintiff damages, and Plaintiff seeks judgment pursuant to 15 U.S.C. § 1117 for Defendant's profits made by Defendant's unauthorized and infringing use of Plaintiff's AQUA JUMP Mark, for the damages sustained by Plaintiff, for all costs necessary to remediate the infringing uses and their effects, and for the costs, expenses and reasonable attorneys' fees incurred in bringing the present action.

19. Plaintiff further seeks judgment for treble damages due to the nature of Defendant's conduct.

**COUNT II**

**TRADEMARK AND/OR TRADE NAME INFRINGEMENT**

20. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

21. Defendant's acts constitute trademark and/or trade name infringement in violation of Plaintiff's rights at common law.

**COUNT III**

**UNFAIR COMPETITION AND PASSING OFF**

22. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

23. Defendant has used a mark which is identical or confusingly similar to Plaintiff's AQUA JUMP Mark with the intent to deceive the public into believing that goods and/or services offered or sold by Defendant are approved by, sponsored by or affiliated with Plaintiff.

24. Defendant's acts as alleged herein were committed with the intent to pass off and palm off Defendant's goods and/or services as the goods and/or services of Plaintiff, and with the intent to deceive and defraud the public.

25. Defendant's acts constitute unfair competition and passing off, and have caused Plaintiff damages, including, without limitation, lost profits, harm to reputation and costs to remediate the confusion and harm to goodwill and reputation caused by Defendant.

26. Defendants' acts constitute violations of 15 U.S.C. § 1125 and of the common law.

27. Plaintiff seeks judgment pursuant to 15 U.S.C. § 1117 for Defendant's profits made by its unfair competition and passing off of Plaintiff's goods and services, for the damages sustained by Plaintiff, for all costs necessary to remediate the unfair competition and passing off and their effects, and for the costs, expenses and reasonable attorneys' fees incurred in bringing the present action.

28. Plaintiff further seeks judgment for three times the amount of Defendant's profits or Plaintiff's damages, whichever is greater, due to the nature of Defendant's conduct.

#### **COUNT IV**

#### **FALSE DESIGNATION OF ORIGIN**

29. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

30. Defendant has caused goods and/or services to enter interstate commerce with the AQUA JUMP Mark connected therewith.

31. Defendant's use of said designation and representation constitutes a false designation of origin which is likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection or association of Defendant with Plaintiff and as to the origin, sponsorship or approval of such goods and/or services by Plaintiff.

32. Defendant's acts are in violation of 15 U.S.C. § 1125 in that Defendant has used in connection with goods and/or services a false designation of origin, or a false or misleading description and representation of fact, which is likely to cause confusion, and to cause mistake and to deceive as to the affiliation, connection or association of Defendant with Plaintiff and as to the origin, sponsorship and approval of Defendant's goods, services and commercial activities by Plaintiff.

**COUNT V**

**MINNESOTA UNIFORM DECEPTIVE TRADE PRACTICES ACT**

33. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

34. Defendant has used in connection with goods and/or services a false designation of origin, or a false or misleading description and representation of fact, which is likely to cause confusion or mistake, and to deceive as to the origin, sponsorship and approval of Defendant's goods and/or services.

35. Defendant's false designation of origin, sponsorship and approval constitutes a violation of Minn. Stat. § 325D.44, as a result of which Plaintiff seeks an award of compensatory damages in excess of \$75,000, plus costs, attorneys' fees and injunctive relief pursuant to, without limitation, Minn. Stat. §§ 8.31 and 325D.45.

**COUNT VI**

**UNJUST ENRICHMENT**

36. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

37. Defendant has made a profit and continues to derive pecuniary gain through its unauthorized use of the AQUA JUMP Mark.

38. Defendant has been, and continues to be, unjustly enriched as a result of its unauthorized use of the AQUA JUMP Mark.

39. Plaintiff has sustained injury, loss and damages in excess of \$75,000 as a result of Defendant's actions.

**WHEREFORE**, Plaintiff prays for the following relief:

(a) That this Court issue an injunction pursuant to, without limitation, 15 U.S.C. § 1116, Minn. Stat. §§ 8.31 and 325D.45, enjoining and restraining Defendant, and its affiliates, agents, servants and employees from directly or indirectly using the AQUA JUMP Mark or any name or mark similar to Plaintiff's AQUA JUMP Mark, which is likely to cause confusion, mistake or to deceive.

(b) That this Court, pursuant to, without limitation, 15 U.S.C. § 1118, order that all products, labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendant bearing the AQUA JUMP Mark, shall be delivered up and destroyed.

(c) That Defendant be required to account to Plaintiff for any and all profits derived by Defendant from the sale of any and all goods and/or services associated with the Alleged Mark, and for all damages sustained by Plaintiff by reason of said acts complained of herein.

(d) That this Court award Plaintiff treble the amount of actual damages suffered by Plaintiff;



(e) That this Court award Plaintiff its attorneys' fees, costs and expenses incurred in this action; and

(f) That the Court grant Plaintiff such other and further relief as this Court may deem just and proper.

**Jury Demand**

Plaintiff demands a trial by jury on all issues so triable.

Dated: September 24, 2012

**BRIGGS AND MORGAN, P.A.**

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